



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/670,900

09/28/2000

Stuart A. Fraser

CF/008

7800

1473

7590

06/19/2006

FISH & NEAVE IP GROUP

ROPES & GRAY LLP

1251 AVENUE OF THE AMERICAS FL C3

NEW YORK, NY 10020-1105

EXAMINER

ZURITA, JAMES H

ART UNIT

PAPER NUMBER

3625

DATE MAILED: 06/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/670,900

Applicant(s)

FRASER ET AL.

Examiner

James H. Zurita

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 9 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,4,6-17,20-37,41-56,60-77,81-98,102-119 and 123-135 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-4, 6-17, 20-37, 41-56, 60-77, 81-98, 102-119, 123-135 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Prosecution History***

The present is provided to clarify the record.

On 28 September 2000, applicant filed the instant application. Applicant claims priority to provisional application 60/156474, filed 28 September 1999.

On 28 October 2002, applicant's preliminary amendment added claims 13-128.

On 18 August 2003, the Examiner issued a non-final rejection of claims 1-4, 6-18, 20-37, 39, 41-56, 58, 60-77, 79, 81-98, 100, 102-119, 121 and 123-128 as anticipated by Gebb (US 6,067,532). Claims 38, 57, 78, 99 and 120 were rejected as unpatentable over Gebb. Claims 5, 18, 40, 59, 80, 101 and 122 were rejected as unpatentable over Gebb in view of Walker (US 6,240,396).

On 10 December 2003, applicant cancelled claims 38, 57, 78, 99 and 120. Applicant amended claims 1, 2, 5, 13, 18, 19, 34, 53, 74, 95, 116, 117, 123, 126-127.

On 13 April 2004, the Examiner issued a second non-final rejection of claims 1-52 as unpatentable over Gebb, above. Claims 53-56, 58-77, 79-98, 100-119, 121-128 were rejected as unpatentable over Gebb, above, in view of Official Notice.

On 16 February 2005, applicant filed a response. It was forwarded to the Examiner on 7 October 2005.

On 6 December 2005, the Examiner rejected Claims 1, 3-4, 6-17, 20-37, 41-52, 130, and 131 as unpatentable over Gebb, above. Claims 53-56, 60-77, 81-98, 102-119, and 123-134 were rejected as being unpatentable over Gebb in view of Official Notice.

On 9 march 2006, applicant amended claims 1, 8, 13, 34, 53, 74, 95, and 116 and added claim 153.

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 9 march 2006 has been entered.

***Response to Amendment***

On 9 March 2006, Applicant amended claims 1, 8, 13, 34, 53, 74, 95, and 116 and added claim 135.

Claims 1, 3-4, 6-17, 20-37, 41-56, 60-77, 81-98, 102-119, 123-134 and 135 are pending and will be examined.

Claims **1, 13, 34, 53, 74, 95** (directed to methods) and **claim 116** (directed to an arrangement) are independent.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-4, 6-17, 20-37, 41-56, 60-77, 81-98, 102-119, 123-135 are rejected under 35 U.S.C. 103(a) as unpatentable over Gebb U.S Patent No. 6,067,532.

Gebb discloses a method for redistributing tickets on a secondary market. Potential sellers (first consumers) enroll with the system manager via telephone, fax, mail, E-mail, or Internet (the first consumers enroll in the system to transfer an item with restricted transferability) [Col 6, Line 2]. The sellers submit an address, a credit card and/or other information to verify their identity and trustworthiness [Cal 6, Line 5]. The system then sends a consignment data packet to the seller's computer requesting that the seller approve the consignment agreement (requesting authorization to transfer the item) [Col 6, Line 15]. After the seller is verified, the ticket information itself is verified with the master arena (provider) database. In a preferred embodiment, the master arena database verifies the existence of the event and seat and the initial sale of the specific seat (contacting the provider to verify whether the first consumer possess the item) [Col 7, Line 36]. The ticket server limits the number of tickets, which an individual seller can consign per event (placing additional restrictions on the item where the constriction comprises a maximum number of tickets available for sale) [Col 7, Line 50]. The ticket server also analyzes any agreements with the particular arena, promoter or entity (providers) regarding the establishment of resale prices (restriction comprises at least one of minimum transfer price, a provider authorizing the transfer) [Col 7, Line 53].

Once the seller has authorized the transaction and their information has been verified, their ticket information is sent to the system and stored in the ticket database [Col 5, Line 9]. In one scenario, the system calculates a set price for the ticket and posts

Art Unit: 3625

the resale opportunity is simply posted at this price (advertising interface) [Col 7, Line 55]. Alternatively, the ticket information can be placed in an offer database allowing potential buyers (second consumers) to bid for the ticket such that the ticket will be sold to the highest bidder (bidding interface, receiving a bid to purchase the item from the second consumer in response to presenting information on the item, acceptance of the bid by the first consumer).

Buyers can browse available tickets and place their bid (presenting information on the item to a second customer [Col 7, Line 65]. If their bid is successful then the buyer pays for the ticket at the time of purchase using any known credit card transaction or payment mechanism known in the art, i.e. cash, check, smart card [Col 8, Line 30]. Buyers must enter their credit card, address and other demographic information to be stored in a buyer database [Col 8, Line 37]. The buyer's information is verified before their purchase of the tickets is authorized (authorization of second consumer prior to arranging for transfer) [Col 8, Line 44]. The ticket is then distributed to the buyer via a desired distribution method selected by the buyer [Col 8, Line 44]. These measures include mailing the ticket to the system manager, from the seller, for redistribution, deactivating the authorization on the initial ticket, or informing the arena not to accept the original ticket (instructing the first consumer to send the item to the second through the provider and providing for the second consumer to make payment for the item, instructing the first consumer to send the item to the second consumer directly and providing for the second consumer to make payment) [Col 9, Line 2].

If the entire transaction is conducted properly, the seller is credited a predetermined amount - for example the face value of the ticket less the transaction fee or less any other fees as required by contract with the arena (provider) the State, etc. (the provider receives a fee from the payment of the second consumer, where the fee is a flat or a percentage payment) [Col 9, Line 16]. The seller can be credited by any number of means including cash check, etc.

Gebb does not explicitly disclose

...presenting to the first consumer a plurality of options, wherein the options include a transfer by auction selection and a transfer by posting an advertisement selection, wherein posting an advertisement comprises posting a price;

Official Notice is taken that it is well within the level of one of ordinary skill in the art at the time the invention was made to present customers with a user-friendly interface, including a web page with selectable options.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Gebb's web pages to made to present customers with a user-friendly interface, including a web page with selectable options.

One of ordinary skill in the art at the time the invention was made would have been motivated to extend Gebb's web pages to made to present customers with a user-friendly interface, including a web page with selectable options for the obvious reason that by doing so, the system can restrict a user's options and possibly reduce input errors. Further, the selection would allow the seller to choose a preferred method of sale, i.e. auction or set-price, in order to give the seller the most flexibility, thereby enhancing customer satisfaction.

***Response to Arguments***

Applicant's arguments filed 9 March 2006 have been fully considered.

Rejections under 35 USC 112 are withdrawn in view of amendment and remarks.

On page 33, Applicant argues:

...Gebb does not show or suggest [new limitations] as recited in independent claims 1, 13, 34, 53, 74, 95, and 116. In fact, the Examiner admits that "Gebb does not explicitly disclose that the system and method incorporates a 'consumer selectable interface'" (Office Action, p. 13, lines 3-4). Instead, in Gebb, the system automatically selects the manner in which an event ticket is to be sold without the seller's input. Gebb describes this throughout the specification, for example, at col. 2, lines 43-50; col. 3, lines 43-10; and col. 7, lines 59-67.

See also applicant's August 13, 2004 Reply to office Action at pp. 46-50.

A version of the above argument was found unpersuasive in a previous Office Action, where applicant relied on Col. 1, lines 5-7, Col. 2, lines 43-50, Col. 3, lines 43-50, Col. 7, lines 59-67 to support his assertions. Applicant now adds Col. 2, lines 43-50, Col. 3, lines 43-[sic, page 4?] line 10 and Col. 7, lines 59-67. Again, it is noted that the features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Concerning Official Notice, Applicant states,

...The Examiner further asserted that applicants failed to adequately traverse official notice of certain features, which the Examiner now contends is admitted prior art (Office Action, pp. 9-10). Applicants respectfully submit that this assertion of official notice and admitted prior art is improper. First, there is no substantial evidence to support the Examiner's official notice assertion without documentary evidence, and therefore there has been no prima facie showing of obviousness. ...Third, the portion of the MPEP dealing with official notice (MPEP § 2144.03) has now been amended to no longer require traverse by applicants. MPEP § 2144.03.



In response, the Examiner respectfully submits that the technical line of reasoning underlying his decision to take Official Notice is clear and unmistakable. The Examiner also notes that applicant still has not explained why the Official Notice is factually incorrect. See MPEP 2144.03(C), rev. 3, August 2005.

Again, A "traverse" is a denial of an opposing party's allegations of fact.<sup>1</sup> The Examiner respectfully submits that applicants' arguments and comments do not appear to traverse what Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made. Even if one were to interpret applicants' arguments and comments as constituting a traverse, applicants' arguments and comments do not appear to constitute an adequate traverse because applicant has not specifically pointed out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1.104(d)(2). An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art. In re Boon, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971).

If applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). MPEP 2144.03 Reliance on Common Knowledge in the Art or "Well Known" Prior Art.

---

<sup>1</sup> Definition of Traverse, Black's Law Dictionary, "In common law pleading, a traverse signifies a denial."

Art Unit: 3625

In view of applicant's continued failure to adequately traverse official notice, the following are admitted prior art::

it would have been obvious to one skilled in the art at the time to allow the seller to choose a preferred method of sale, i.e., auction or set-price, in order to give the seller the most flexibility, thereby enhancing customer satisfaction" (Office Action, p. 6, lines 14-17).

...membership-based websites that require password, login or some sort of identifying information to access the content are notoriously known in the art - examiner would like to note that the term "membership" is interpreted as broadly as possible and does not denote requirement of payment or subscription, it is merely defined here as a system that requires recognition of a user. Such mechanisms are generally implemented by requiring a user to supply certain information - including but not limited to a name, contact information, billing information -and storing that information in association with an identification - a password, a pin number, an ID, etc. - unique to the user. The user then can only view content on the website they are registered and have provided the system with some information by which the system can track their activities and preferences. Such systems are widely implemented for the purpose of creating more relevant content and sales promotions that are targeted to the particular needs of each user, thereby increasing the likelihood of a sale.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James H. Zurita whose telephone number is 571-272-6766. The examiner can normally be reached on 8a-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3625

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**James Zurita**  
**Primary Patent Examiner**  
**Art Unit 3625**  
30 May 2006

*James Zurita*  
*Primary Patent Examiner*  
*Art 3625*